

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED
10 O'Clock A M

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

MAY 17 2010

JEANNE HICKS, Clerk
BY DEBBY RYAN
Deputy

No.
P1300CR20081339

ORIGINAL

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION 6
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
TUESDAY, MAY 11, 2010
FRIDAY, MAY 14, 2010
A.M. SESSIONS

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

Tuesday, May 11, 2010-Court's Rulings on Motions
Friday, May 14, 2010-Jury Voir Dire

LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

ORIGINAL

TUESDAY, MAY 11, 2010
A.M. SESSION

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER AND
MR. JEFF PAUPORE, DEPUTY COUNTY ATTORNEYS.
FOR THE DEFENDANT: MR. JOHN SEARS,
MR. LARRY HAMMOND, AND MS. ANNE CHAPMAN,
ATTORNEYS AT LAW.
ALSO PRESENT: MR. JOE GUASTAFERO,
MS. JENNIFER OBERST AND MR. RICH ROBERTSON.

(Other proceedings held but not
included in this transcript.)

THE COURT: The trial effectively has
commenced with the jury selection process of -- on May
4th. Since May 4th we've been doing the individual Voir
Dire of the jury panel and here we are on May 11th.

I believe that it's acknowledged that the En
Case case files that were used by Detective Page were
requested, were requested for a lengthy period of time and
finally after the interview, been disclosed and that does
put -- despite the fact that the Defense was given an
image equivalent to the State's image of the computers --
Mr. DeMocker's computer, puts the Defense experts at some
disadvantage since they're receiving it in such a late
fashion.

We have not done opening statements yet. I
would, first of all, say that the State may not call

1 Detective Page before we get into June to give the Defense
2 some chance of -- giving their expert some chance of
3 looking at the En Case case files that Detective Page used
4 that have not been provided.

5 With regard to absolutely precluding the
6 forensic experts, I don't believe that sufficient unfair
7 prejudice has been shown or affect on the Defense case to
8 do that. However, the Court believes that there has been
9 a discovery violation. I think this supports what the
10 Court of Appeals is going to consider on the 19th.
11 Supports my conclusions with regard to two of the
12 aggravating factors being stricken that I already did and
13 supports a discovery violation that would justify that if
14 I still had that issue before me.

15 In terms of the foundation and what can be
16 authorized and what can be precluded, I don't think that
17 it's -- that it's necessarily so that a Defendant -- a
18 person -- I'll just leave the Defendant out -- that a
19 person view only matters on the internet that ultimately
20 are connected to the way in which the elicited victim was
21 dispatched. I think that the mere looking does provide
22 relevant information to the jury about the mental state of
23 the person who's conducting the search, but I also think
24 that with regard to -- I think it's four or so of the six
25 searches where there can -- where there's no information

1 on when the matter was viewed or created will fail to lay
2 a sufficient foundational basis for information to be
3 provided about the mental state of the person accused in a
4 relevant time context.

5 Those that were viewed -- the two that were
6 viewed that have a file created or last visited date that
7 the State's witnesses -- expert witnesses may be able to
8 determine occurred within a month prior to the actual
9 demise of the elicited victim, the mere fact of searching is
10 important for what is the mental state at the time
11 relevant to the homicide.

12 So for those two it seems to me that the --
13 that there is not a basis to sanction and that there is a
14 basis for admission of those searches and I have
15 considered what the limitations are from previous
16 testimony that has been given in the course of the case
17 and of the argument that has been made and of the nature
18 of the evidence in relationship to the State's requirement
19 to prove intentional or premeditated murder.

20 So with regard to those two searches I'll --
21 I'll not preclude the expert Detective Page from giving
22 testimony about the manner of his search and what he found
23 in connection with those two.

24 With regard to the ones that are not able to
25 be dated I will preclude those for reasons that are

1 inclusive of foundational issues but primarily also
2 related to the late disclosure despite the request of the
3 En Case materials.

4 And with regard to the expert Mr. Livsay
5 (sic), that's L-i-v-s-a-y.

6 MR. BUTNER: It's actually, L-i-n-d-v-a-y,
7 Judge.

8 THE COURT: Lindvay.

9 MR. BUTNER: Lindvay. So --

10 THE COURT: Thank you. With Detective Lindvay
11 I agree that Melendez undesignated case law basically says
12 you can't substitute some supervisory criminal report, to
13 the extent then he conducted his own examination and can
14 testify generally about how En Case works, I'm not going
15 to preclude his testimony in that fashion, but to comment
16 on -- he won't be allowed to comment on what Detective
17 Page did or the results of Detective Pages' report except
18 to the extent that he himself went back and conducted his
19 own evaluations and achieved whatever results he achieved
20 from his own review of the computer. His own examination
21 on the computer, but he won't be allowed to comment on
22 what Page did or whether it specifically was proper or
23 improper. I find that that's disallowed under the case
24 law in particular with regard to confrontation that I'm
25 aware of.

1 Ms. Chapman.

2 MS. CHAPMAN: Your Honor, two points of
3 clarification. So the two searches that were identified
4 with possible dates, and we will go -- we've asked on the
5 27th for additional dates for Pages' interview and we
6 haven't received them, but the two that at the end of the
7 interview he said that he may be able to do a view date
8 were how to kill and make it look like a suicide and how
9 to stage a suicide, so those are the two that you're going
10 to permit him to testify about?

11 THE COURT: If he's able to lay the foundation
12 that would make them relevant in a time construct to when
13 the homicide occurred --

14 MS. CHAPMAN: Right.

15 THE COURT: -- yes.

16 MS. CHAPMAN: Okay. And then my second issue
17 was just with respect to what you had just said about
18 Mr. Lindvay. He's not going to be able to testify about
19 the result of Detective Pages' search or what those
20 results mean, is that right, he's going to be able to
21 testify generally about En Case but not --

22 THE COURT: If he's an expert on En Case and
23 can testify as to that, he can testify as to forensic
24 computer practices. I'm not going to preclude him from
25 testifying in general terms about those sort of things but

1 to make specific comment about what Page did or didn't
2 do --

3 MS. CHAPMAN: Or the result. I was just
4 wondering --

5 THE COURT: -- or the result.

6 MS. CHAPMAN: Thank you.

7 THE COURT: If -- if he himself went back and
8 verified through his own evaluation and examination
9 particular results, then he can testify as to that but not
10 commenting on somebody else's work.

11 MS. CHAPMAN: And I would just ask that if
12 that has happened, that hasn't been disclosed to us, so we
13 would have to deal with that issue at that time.

14 THE COURT: Understood.

15 MR. BUTNER: Judge, my recollection is that
16 Detective Page testified on how to kill someone not how to
17 kill someone and make it look like a suicide, that also
18 was a subtopic search but it was how to kill someone.

19 THE COURT: Yeah, that was --

20 MR. BUTNER: And I don't think we should be
21 confined on how to kill someone and make it look like a
22 suicide.

23 THE COURT: No, I'm not doing that.

24 MS. CHAPMAN: Your Honor, two --

25 MR. BUTNER: Thank you.

1 THE COURT: Whatever the identity is of the
2 searches that were conducted that he can provide a date
3 for that have to do with killing someone else, whether it
4 involves killing somebody else and making it look like an
5 accident or suicide, that is not -- I'm not specifying
6 that as a limitation --

7 MR. BUTNER: Thank you.

8 THE COURT: -- of what he can testify to.

9 MS. CHAPMAN: Your Honor --

10 THE COURT: Only the ones that he can testify
11 to that have some relevance with regard to killing
12 somebody else and what can be dated within a time
13 construct that would make it relevant to what may be going
14 through somebody's mind.

15 MS. CHAPMAN: Your Honor, just -- this is very
16 important and just to be very clear because I think that
17 the record now is very unclear. There were two searches;
18 how to kill someone was one search and how to kill and
19 make it look like a suicide was the second search.

20 With respect to the how to kill someone,
21 that's the search for which he can't even say a date on
22 which it was viewed at all, when it was searched, or any
23 other date information about it.

24 The only searches that he can identify a view
25 date or a created date on how to kill and make it look

1 like a suicide and how to stage a suicide, I have the
2 transcript. I went through it line by line and Mr. Butner
3 was there, but specifically with respect to the search how
4 to kill someone he had no date information. He couldn't
5 draw any date conclusion so he should be --

6 THE COURT: My point is the ones that are
7 dated, that he can date, whatever the search title is, as
8 long as it pertains to some manner of staging or killing,
9 those are permitted, but whether or not the title is
10 precisely what I suggested was --

11 MS. CHAPMAN: Sure.

12 THE COURT: -- that part of it is not the
13 limitation that I'm making on what's admissible.

14 MS. CHAPMAN: So I think we should have an
15 agreement, though, about what those searches are based on
16 his interview and so what I'm saying is that having gone
17 through the transcript, having been there, the two
18 searches about which he can gave date information are how
19 to kill and make it look like a suicide and how to stage a
20 suicide, those are identified in the motions not disputed
21 by the State.

22 THE COURT: All right. Then I will presume
23 that that's what the title of the searches are.

24 Mr. Butner.

25 MR. BUTNER: I disagree with the title of the

1 searches, Judge, but we'll address that at the appropriate
2 time. Thank you.

3 THE COURT: What do you think the title of the
4 searches are?

5 MR. BUTNER: I think it's how to kill someone,
6 and this is part of Detective Pages' breakdown, if you
7 will, during the course of the interview because he was
8 aware of the date.

9 THE COURT: Both of them were how to kill
10 someone?

11 MR. BUTNER: No. How to kill someone and then
12 how to kill someone and make it look like a suicide, I
13 believe was the other one, and he had difficulties with
14 the dates and got all confused and it was --

15 THE COURT: Well, I would suggest that you
16 clarify with him what the names of the searches were
17 before you get to that --

18 MR. BUTNER: Oh, trust me we will.

19 THE COURT: -- point or before you make an
20 opening statement --

21 MR. BUTNER: Absolutely.

22 THE COURT: -- that misrepresents what they
23 were.

24 MR. BUTNER: Absolutely, Judge.

25 MS. CHAPMAN: I guess, Your Honor, at this

1 point until -- I would like to have those identified to us
2 prior to opening statements. It may be that we --

3 THE COURT: I will order the State before
4 opening statement --

5 MR. BUTNER: I will identify them before.

6 THE COURT: -- to identify them after
7 verifying that with Detective Page.

8 MS. CHAPMAN: And it may be that we need to
9 have an evidentiary hearing.

10 THE COURT: Anything else that needs
11 clarification on the May 3rd motion?

12 MS. CHAPMAN: No, Your Honor, not from the
13 Defense.

14 MR. BUTNER: Nothing further from the State.
15 Thank you. Judge.

16 THE COURT: Okay. The other major motion we
17 had, I think it that was still pending, is that -- I'm
18 trying to stick within, and to the extent that this
19 addresses in any greater detail the February 25th motion
20 to preclude State's computer experts, you know, I think
21 this is further in clarification of that.

22 I'm not precluding but I am ordering some
23 limitations on testimony with regard to when they -- when
24 the Detective may be called to give the Defense some
25 chance with their experts now that they've received the En

1 Case information, be more prepared, so -- and that's being
2 Page can't be called before we start June.

3 MS. CHAPMAN: And just to repeat our request
4 we would like dates immediately for Detective Page to
5 complete the interview and I guess also for Detective
6 Lindvay.

7 THE COURT: Okay. If you all can discuss
8 that --

9 MS. CHAPMAN: Sure.

10 THE COURT: -- and let me know by tomorrow
11 morning if there's still a dispute about dates to finish
12 off interviews, if I need to make a ruling. If you can
13 enter an agreement before tomorrow morning --

14 MS. CHAPMAN: I'll keep trying.

15 THE COURT: -- when we take it up. I would
16 appreciate it.

17 (Other proceedings held but not
18 included in this transcript.)

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21 THE COURT: Oh, okay. As I was saying,
22 near -- near the victim's home, doesn't add anything
23 particularly to what knowledge everyone in the room has
24 already. Near the victim's home, if that's qualified as
25 being out on the Granite Mountain trials across Williamson

1 Valley, doesn't add anything to the fund of knowledge.

2 So I don't know that this information is
3 critical to the State's case and I think it's late
4 disclosed. I'll preclude Mr. Calmbach.

5 (Other proceedings held but not.
6 included in this transcript.)

7 *

8 *

9 THE COURT: All right. So I guess I'm not
10 going to preclude Mr. Gilkerson from testifying. I am
11 still intending to give a Willits instruction because of
12 the lack of preservation of the location of where these
13 shoe prints were.

14 With regard to Gilkerson identifying or making
15 an attempt to identify prints that, again, are not precise
16 in terms of where they were located but in general they're
17 located behind the house and identifying shoe prints of
18 the victim, I don't find that there's prejudice resulting
19 from that.

20 I think that this information was -- generally
21 was known to the Defense and I don't find the late
22 disclosure of some comparison between -- by Mr. Gilkerson
23 between the shoes that were on the decedent and shoe
24 prints that were photographed to identify them to be
25 perhaps going out behind the house at sometime. You can't

1 put a time constraint on that with precision. Although it
2 had rained as I understand it from the time frame
3 approximate to the body being found.

4 And I think that in terms of preclusion of
5 late disclosed information that there is time enough
6 before you get to the Defense case for the experts to
7 evaluate and do their own report for the Defense. So I'm
8 going to deny the motion in connection with Gilkerson.

9 Next is the tire tracks?

10 MS. CHAPMAN: Yes, Your Honor, the
11 forensically enhanced tire tracks. The State's response
12 indicates that it doesn't intend to rely on that or
13 present it at all, so I think we'll skip it as long as
14 there's no --

15 THE COURT: Okay. And I'll consider that that
16 has been essentially waived by the State. They don't
17 intend to use it. Go ahead. Number --

18 (Other proceedings held but not.
19 included in this transcript.)

20 *

21 *

22 THE COURT: So at this point you're not
23 pointing at any particular statements in the 24 that were
24 disclosed that you intend to use for your case in chief at
25 all?

1 MR. BUTNER: Correct.

2 THE COURT: And whether they may be used for
3 rebuttal purposes at this point you don't -- you're
4 essentially copying everything that is recorded and
5 passing it on just in the event that there's something
6 that said that needs to be rebutted?

7 MR. BUTNER: Exactly.

8 MS. CHAPMAN: Your Honor, I just would like to
9 put on the record that this is a tremendous cost burden
10 for the Defense to transcribe every one of these recorded
11 -- I mean, the cost is just staggering and that's what
12 we're required to do if the State is not going to provide
13 any further identification, which they haven't done, and
14 it's -- it's really an unbearable cost at this point and
15 it's ongoing. I mean, we've got 23 CD's.

16 THE COURT: 24.

17 MS. CHAPMAN: Well, I think there was suppose
18 to be 24 but only 23 were delivered.

19 THE COURT: Oh, okay, hence some of my
20 confusion. All right. I recognize what you're saying and
21 I'm going to deny the preclusion.

22 MS. CHAPMAN: But, Your Honor, just to be
23 clear, that the State is not permitted to use any of those
24 in its case in chief because they weren't identified; is
25 that right?

1 THE COURT: Correct.

2 (Other proceedings held but not
3 included in this transcript.)

4 *

5 *

6 THE COURT: Thank you. Mr. Butner, Number 11.

7 MR. BUTNER: I don't know where these calls
8 were, Judge. I don't know why we're late disclosing them,
9 you know, I've just been asking and I never have been able
10 to find out. Apparently they got lost some place. I
11 don't have any idea but we disclosed them when they were
12 found.

13 THE COURT: All right. Well, they were
14 disclosed late. I'll enforce the previous order by the
15 Court and preclude them.

16 (Other proceedings held but not
17 included in this transcript.)

18 *

19 *

20 THE COURT: All right. Number 5, I'll grant
21 your motion.

22 (Other proceedings held but not
23 included in this transcript.)

24 *

25 *

1 THE COURT: On this one I'll consider what
2 sanction to impose. It may include something in the way
3 of costs for your expert, but let me take this one under
4 advisement.

5 Next.

6 (Other proceedings held but not
7 included in this transcript.)

8 *

9 *

10 THE COURT: I'm going to deny the request for
11 sanctions as it relates to Number 9.

12 Number 10.

13 (Other proceedings held but not
14 included in this transcript.)

15 *

16 *

17 MR. BUTNER: I don't believe it will other
18 than maybe there'll be a question, did you review all of
19 the bank records of the accounts of these two people?

20 The answer would be, yes, I did.

21 THE COURT: I don't find that there's a need
22 for sanctions to be imposed at this point with regard to
23 those records given the State's explanation of not finding
24 them particularly relevant to any issues in Mr. DeMocker's
25 case.

1 Go ahead. Next.

2 (Other proceedings held but not
3 included in this transcript.)

4 *

5 *

6 THE COURT: Are you referring to the
7 examination of Evidence Item 518 --

8 MS. CHAPMAN: Yes.

9 THE COURT: -- and the State's indication of
10 no intention of using that testing?

11 I'll rely on that and conclude that it's a
12 moot issue.

13 (Other proceedings held but not
14 included in this transcript.)

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FRIDAY, MAY 14, 2010
A.M. SESSION

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER AND
MR. JEFF PAUPORE, DEPUTY COUNTY ATTORNEYS.
FOR THE DEFENDANT: MR. JOHN SEARS,
MR. LARRY HAMMOND, AND MS. ANNE CHAPMAN,
ATTORNEYS AT LAW.
ALSO PRESENT: MR. JOE GUASTAFERO,
MS. JENNIFER OBERST AND MR. RICH ROBERTSON.

(Other proceedings held but not
included in this transcript.)

VOIR DIRE EXAMINATION

BY MR. BUTNER:

MR. BUTNER: And what kind of art do you do?

PROSPECTIVE JUROR NO. 103: Gourd and wood.

MR. BUTNER: And are you a member of any
organizations? Any kind of clubs or --

PROSPECTIVE JUROR NO. 103: No.

MR. BUTNER: -- organizations?

Have you been?

PROSPECTIVE JUROR NO. 103: No.

MR. BUTNER: Okay. Any political affiliation?

PROSPECTIVE JUROR NO. 103: Just registered
Democrat.

MR. BUTNER: What do you think of the death
penalty?

1 PROSPECTIVE JUROR NO. 103: I think it's
2 unfortunate that it has to be imposed. Necessary in some
3 cases, I suppose.

4 MR. BUTNER: And what do you mean when you say
5 it's unfortunate that it has to be imposed?

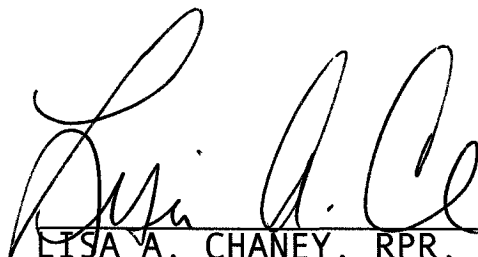
6 PROSPECTIVE JUROR NO. 103: I'm a nonviolent
7 person. I never want to be hit in the nose and I never
8 wanted to hit anyone in the nose. So to this day I still
9 haven't been hit in the nose and I've never hit another
10 person in the nose. So it's just -- I'm just a nonviolent
11 person.

12 (Other proceedings held but not
13 included in this transcript.)
14 (Proceedings were concluded.)
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R E P O R T E R ' S C E R T I F I C A T E

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the foregoing pages 2 through 20 constitute a full, true, and accurate partial transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 14th day of May, 2010.



LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801